REMARKS

Receipt of the Office Action of October 26, 2009 is gratefully acknowledged.

Claims 8 - 14 have been examined, as a result of which claims 8 - 14 have been rejected under 35 USC 112, second paragraph as indefinite and also rejected under 35 USC 103(a) over applicant's admitted prior art (AAPA).

Regarding the rejection under 35 USC 112, second paragraph, the examiner questions certain parts of claim 8 and claim 12. Regarding claim 12, it has been cancelled, thereby rendering that part of the rejection moot. As to claim 8, it is respectfully submitted that the above amendment to claim 8, should now overcome this rejection. The examiner states that the recited limitation of m<n in line 5 lacks antecedent basis. This line of claim 8 has ben amended to replace "m<n" with "m" and to transpose "m<n" to the end of line 5. In this regard it should be noted that both m and n are the numbers relating to the filling instances, whereas m and n are both natural numbers. In the specification it is clearly stated that m is less than n, that n relates to filling instances (page 4, lines 26 and 27), and that m relates to the average after-run amount (page 5, lines 3 - 5). As to the phrase "determining the average of n filling instances," this means that an average after-run amount is being calculated by averaging the after-run amounts of n filling instances.

The definiteness of the claims should now be resolved.

Regarding the rejec5tion under 35 USC 103(a) over AAPA, this rejection is respectfully traversed.

It has not been taught in the discussion of the prior art in the specification

how to determine the after-run amount by averaging m<n filiing instances after a signal associated with the unit and signaling changes in filling conditions, and without this teaching, patentability cannot be negated. True the after-run amount is discussed, but it has not been admitted that teaching required above is known. In fact, the examiner does admit that the "...prior art does not disclose averaging the after-run value over m instances, where m is less than n." The examiner, nevertheless concludes that "one of ordinary skill in the art" would know what to do. How would they know? The examiner's discussion is not persuasive, and is lacking. Accordingly, the prop[osed rejection under 35 USC 103(a) must fail.

In view of the forgoing, reconsideration and re-examination are respectfully requested and claims 8 - 11, 13 and 14 found allowable.

Respectfully submitted,
BACON & THOMAS, PLLC

Date: January 26, 2010

Felix J. D'Ambrosio
Attorney for Applicant
Registration Number 25,721

Customer Number *23364*
BACON & THOMAS, PLLC
625 Slaters Lane, Fourth Floor
Alexandria, Virginia 22314
Telephone: (703) 683-0500
Facsimile: (703) 683-1080
S:\Producer\fjd\CLIENTS\Endress+Hauser Holding GmbH\BREI3003-FL0177\Jan. 26, 2010 Response.wpd